IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.959 OF 2004

Mohmed Tejmohmed Khan ...Appellant

Vs.

Naseem Ahmed Ansari & Anr. ...Respondents.

CORAM: A.S.OKA,J.
DATE : FEBRUARY 4, 2005.

P.C.:

1. The Appeal was admitted on 1st February 2005 and interim relief was granted. Thereafter, the learned Counsel for the Respondents mentioned the Appeal and stated that the Respondent No.1-original Plaintiff has no objection if impugned order is set aside and Notices of Motion are ordered to be heard afresh. He has filed an Affidavit to that effect. Vide St.no.584 of 2005 he has tendered one more Affidavit of the Respondent No.1 which is affirmed today. The same is taken on record and marked "X" for identification. In this Affidavit filed today, the Respondent No.1 has apologised for the certain statements made in the Affidavit dated 1-2-2005 and has sought permission to withdraw the said Affidavit unconditionally. The apology is accepted and the Affidavit dated 1-2-2005 will be treated as withdrawn.

2. In paragraph No.2 of the Affidavit filed today, he has stated as under :

"(2) I say that I am herewith giving the

> Undertaking that I have no objection if this Hon'ble Court remand the matter back to the Trial Court for hearing afresh passing order in the aforesaid trial court suit. I hereby give my full and free consent for the same and pray that appropriate order be passed by this Hon'ble Court."

3. In view of this Affidavit I have taken up the Appeal for final hearing.

4. While deciding the Civil Application No.1326 of 2004 I have recorded a prima facie finding that the impugned Judgment and Order is not legal as there is no clear finding recorded that the Respondent No.1-Plaintiff has prima facie established that he was in possession of the suit premises on the date of institution of the suit and that subsequently he has been forcibly dispossessed.

5. In view of unconditional consent given by the Respondent No.1, the impugned Judgment and Order deserves to be quashed and set aside.

6. Hence I pass the following order :

i) The impugned Judgment and Order dated 25th October 2004 is quashed set aside and the Notices of Motion No.3114, 3444 and

3445 of 2004 are restored to the file.

ii) The parties will appear before the learned Judge of the City Civil Court, Bombay on 14th February 2005 for fixing the schedule of hearing of aforesaid Notices of Motion.

iii) The learned Judge will decide the Notices of Motion afresh as expeditiously as possible and in any event on or before 29th April 2005.

iv) All contentions of both the parties on merit are kept open.

v) Parties and the concerned Court to act on an authenticated copy of this order.

JUDGE